FILE COPY

FILED
JAN 10 1930
CLERK

Supreme Court of the United States

OCTOBER TERM, 1929

No. 248

VICTORIO NOGUEIRA,

Petitioner,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

BRIEF ON BEHALF OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

JOHN M. GIBBONS,
Counsel for Respondent.

EDWARD R. BRUMLEY,
FLEMING JAMES, JR.,
EDMUND J. MOORE,
Of Counsel.

E. W. TRAVER, Law Printer, 154 Nassau St., N. Y. (Tel. Beekman 2726)

SUBJECT INDEX

	PAGE
I. The opinion of the court below	1, 2
II. Jurisdiction	2
III. Statement of the case	2, 3
IV. Specification of error—Question presented	4
V. Argument:	
Summary of argument	4, 5
POINT I. The statute involved is clear and unambiguous, and petitioner comes under its provisions	5
(a) Pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, 44 Stat. 1124	5
(b) The employment was maritime	8
(c) The injury occurred upon navigable waters	11
(d) The case is within admiralty jurisdiction in tort	13
(e) This case is not of local but of general admiralty concern	13
(f) Recovery cannot validly be provided by state compensation law	13
(g) The statute is exclusive	14
POINT II. The intention of Congress was to provide compensation for railroad employees doing longshore work, injured on navigable waters, whether or not they are engaged in interstate commerce	16

PAGE

(a) Previous attempts by Congress to provide compensation for longshoremen had been declared unconstitutional 16

(b) Rights and remedies of seamen, longshoremen, and railroad employees prior to passage of Longshoremen's and Harbor Workers' Compensation Act..... 17

(c) Legislative history of the passage of the Act 19

(d) Act of May 17, 1928, applying to District of Columbia 23

POINT III. The interpretation adopted promotes uniformity and provides for all classes 24

Conclusion 30

TABLE OF CASES CITED

PAGE

Atlee v. Packet Co., 21 Wall. 389..... 11

Atlantic Transport Co. v. Imbrovek, 234 U. S. 52....10, 11

Aurora Shipping Co. v. Boyce, 191 Fed. 960..... 12

Baltimore & Ohio R. R. Co. v. Groeger, 266 U. S. 521.. 25

B. & O. S. W. R. R. v. Burtch, 263 U. S. 540..... 17

Buzynski v. Luckenbach S. S. Co., 277 U. S. 226..... 19

Chicago G. W. R. R. v. Schendel, 267 U. S. 287..... 25

Cope v. Cope, 137 U. S. 682..... 24

Cope v. Vallette Dry-Dock Co., 16 Fed. 924..... 25

Eastern Transp. Co. v. United States, 272 U. S. 675.. 29

Engel v. Davenport, 271 U. S. 33.....18, 19, 22

Erie R. Co. v. Jacobus, 221 Fed. 335..... 17

Federal Sugar Refining Co. v. United States, 30 Fed. (2d) 254 29

Fleet Corp. v. Rosenberg Brothers, 276 U. S. 202.... 29

Gonsalves v. Morse Dry Dock Co., 266 U. S. 171..... 13

Grant Smith-Porter Co. v. Rohde, 257 U. S. 469.....14, 29

Gt. Lakes Co. v. Kierejewski, 261 U. S. 479.....13, 25

Great Northern Ry. Co. v. Donaldson, 246 U. S. 121..25, 26

Hermann v. Port Blakely Mill Co., 69 Fed. 646..... 11

Illinois Cent. R. Co. v. Porter, 207 Fed. 311..... 17

Industrial Comm. v. Nordenholt Co., 259 U. S. 263...14, 29

International Stevedoring Co. v. Haverty, 272 U. S. 50 .....10, 18, 19

Johnson v. Chicago & P. Elev. Co., 119 U. S. 388..... 11

PAGE

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149..... 16

London Guarantee & A. Co. v. Industrial Acci. Com., 279 U. S. 109.....13, 14, 30

Martin v. West, 222 U. S. 191..... 11

Messel v. Foundation Co., 274 U. S. 427..... 30

Millers' Underwriters v. Braud, 270 U. S. 59..... 14

Nogueira v. New York, N. H. & H. R. Co., 32 Fed. (2d) 179 ..... 2, 3

Northern Coal & Dock Co. v. Strand, 278 U. S. 142...10, 14

Obrecht-Lynch Corporation v. Clark, 30 Fed. (2d) 144 28

Pacific Co. v. Peterson, 278 U. S. 130..... 19

Panama R. R. Co. v. Johnson, 264 U. S. 375.....15, 22

Robins Dry Dock Co. v. Dahl, 266 U. S. 449..... 13

Smith & Son v. Taylor, 276 U. S. 179.....11, 13

Southern Pacific Co. v. Jensen, 244 U. S. 205.....8, 16, 17

Texas & Pacific Ry. v. Rigsby, 241 U. S. 33..... 30

The Aurora, 163 Fed. 633..... 12

The Coamo, 267 U. S. 220..... 5

The Mary Garrett, 63 Fed. 1009 12

The Montezuma, 19 Fed. (2d) 355..... 19

The Passaic, 204 Fed. 266..... 18

The Plymouth, 3 Wall. 20..... 11

The Strabo, 90 Fed. 110, 98 Fed. 998..... 12

Washington v. Dawson & Co., 264 U. S. 219.....13, 16, 22

Williams v. Oceanic Stevedoring Co., 27 Fed. (2d) 905 19

TABLE OF STATUTES CITED

PAGE

Act of Congress of March 2, 1893, c. 196 (27 Stat. 531), as amended by Act of Congress of March 2, 1903, c. 976 (32 Stat. 943), and as supplemented by Act of Congress of April 14, 1910, c. 160 (36 Stat. 298) 15, 17, 25, 28, 29

Act of Congress of April 22, 1908, c. 149 (35 Stat. 65) 3, 4, 9, 10, 14, 15, 17, 18, 24, 25, 28, 29

Act of Congress of February 17, 1911, c. 103 (36 Stat. 913), as amended by Acts of Congress of March 4, 1915, c. 169 (38 Stat. 1192) and June 7, 1924, c. 355 (43 Stat. 659) 15, 17, 25, 26, 29

Act of Congress of October 6, 1917, c. 97 (40 Stat. 395) 16

Act of Congress of March 9, 1920, c. 95 (41 Stat. 525) 29

Act of Congress of June 5, 1920, c. 250, §33 (41 Stat. 1007), amending Act of Congress of March 4, 1915, c. 153, §20 (38 Stat. 1185) ... 9, 10, 14, 15, 18, 19, 22, 28, 29

Act of Congress of June 10, 1922, c. 216 (42 Stat. 634), amending §§24 and 256 of the Judicial Code 16

Act of Congress of March 4, 1927, c. 509 (44 Stat. 1424) ..... 3 *et seq.*

Act of Congress of May 17, 1928, c. 612 (45 Stat. 600) . 23, 24

Judicial Code, §§24 (par. 3) and 256 (par. 3) 16

Judiciary Act of 1789, c. 20, §9 (1 Stat. 76) 16

Other Authorities Cited

Congressional Record, Sixty-ninth Congress, 1st Session, vol. 67, pt. 4, p. 4119 19

Congressional Record, Sixty-ninth Congress, 1st Session, vol. 67, pt. 10, p. 10467 15

Congressional Record, Sixty-ninth Congress, 1st Session, vol. 67, pt. 10, pp. 10608-10614 ..... 15, 20

PAGE

Congressional Record, Sixty-ninth Congress, 2d Session, vol. 68, pt. 2, p. 1687 ..... 15, 20

Congressional Record, Sixty-ninth Congress, 2d Session, vol. 68, pt. 5, pp. 5402-5414 21

Congressional Record, Sixty-ninth Congress, 2d Session, vol. 68, pt. 5, pp. 5900-5909 21

Constitution, U. S.,
Art. I, Sec. 8, Par. 3 30

Art. I, Sec. 8, Par. 18 30

Art. III, Sec. 2 30

41 Harvard Law Review 791 22

Hearing before the Committee on the Judiciary, House of Representatives, Sixty-ninth Congress, 1st Session, on H. R. 9498, April 8, 15 and 22, 1926 20

Hearings before a subcommittee of the Committee on the Judiciary, United States Senate, Sixty-ninth Congress, 1st Session, on S. 3170, March 16 and April 2, 1926 ..... 19, 20

House Report No. 1767—Congressional Record, Sixty-ninth Congress, 2d Session, vol. 68, pt. 2, p. 1687. 15, 20, 21

House Report No. 1357, April 21, 1928, Seventieth Congress, 1st Session 24

Opinion No. 29 of January 20, 1928—United States Employees' Compensation Commission 26–28

Senate Bill No. 3170 ..... 15, 19–21

Senate Report No. 973—Congressional Record, Sixty-ninth Congress, 1st Session, vol. 67, pt. 10, pp. 10467, 10608-10614 ..... 14, 15, 19, 20

Senate Report No. 852, April 20, 1928, Seventieth Congress, 1st Session 24

APPENDICES

PAGE

APPENDIX A—

Pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, 44 Stat. 1124.....31–36

APPENDIX B—

Act of Congress of May 17, 1928, c. 612, 45 Stat. 600 .....37, 38

APPENDIX C—

Act of Congress of April 22, 1908, c. 149, §1, 35 Stat. 65 38

APPENDIX D—

Act of Congress of March 4, 1915, c. 153, §20, 38 Stat. 1185, as amended by Act of June 5, 1920, c. 250, §33, 41 Stat. 1007..... 39

APPENDIX E—

Senate Report No. 973.....39-42

APPENDIX F—

House Report 1767 42-45

Supreme Court of the United States

OCTOBER TERM, 1929

VICTORIO NOGUEIRA,
Petitioner,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

No. 248

BRIEF ON BEHALF OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Opinion of the Court Below

The Trial Court, United States District Court for the Southern District of New York, dismissed petitioner's complaint, rendered no reported opinion, but said at the end of the trial:

> "This injury arose upon a boat on navigable waters, a boat of more than 18 tonnage. The Compensation Act passed by Congress provides compensation for disability or death, and in view of the nature of this Compensation Act, I am thoroughly convinced that this Court has no jurisdiction, and that this man's remedy is one of application under the compensation act. Therefore the motion to dismiss is granted" (R. 52, 54).

The Circuit Court of Appeals, Second Circuit, unanimously affirmed the judgment, Circuit Judge Swan writing the opinion. 32 Fed. (2d) 179 (R. 55-61).

Jurisdiction of this Court

This Court granted petitioner's application for writ of certiorari on October 21st, 1929 (R. 62).

Statement of the Case

Petitioner brought this action to recover for personal injuries alleged to have been received by him on October 13th, 1927, while in the employ of the railroad company as a laborer and freight handler (R. 1-4). On that day he started to work at 8 o'clock in the morning at Piers 37 and 38, storing freight on railroad cars (R. 16, 17). During the three years he had worked for the company he had been along the East River, sometimes on a float, sometimes on a dock (R. 17). In the afternoon the gang of seven men and foreman went to Pier 42 (R. 18), where they were to load freight from the pier to a float. The freight consisted of bales of paper fifteen to twenty feet from the plank going from the pier to the float (R. 19). The bales were five to six feet long, and weighed about thirteen hundred pounds (R. 19).

The plank was about five and a half feet wide and twelve feet long (R. 20). This plank did not go into a car on the float, but went to the middle of the float (R. 33). The end on the float was about four or five feet lower than the end on the dock as the tide was low (R. 21). Two men put a bale of paper on a truck which had two wheels and two handles (R. 21).

After the men put the bale on the truck petitioner took the truck to the plank, and there stopped (R. 22, 23). Some of the men stuck their hooks into the bale of paper, and petitioner and another man lifted up the handles of the truck (R. 23). Some pushed the truck down, and then lifted up the hooks. The truck came very slow at first, but started to go fast (R. 24). He was still holding on to the handles when the truck got down on the float (R. 24, 25), although the handles went up after he had gone three or four feet (R. 25). The other workers remained on the plank alongside of the dock (R. 25). When he got to the float the truck and bale fell on his leg (R. 26). When petitioner fell he was on the floor of the float, falling on top of the rail (R. 33). He was still holding on to the handles when the truck got down, and he did not fall down until he got to the float (R. 24, 33).

The float itself weighed five hundred tons (R. 51). It was conceded the float was on navigable waters (R. 52). The bale involved in the accident was in the course of transportation from New York to Connecticut (R. 13).

Petitioner brought this action under the Federal Employers' Liability Act (Act of Congress, April 22, 1908, c. 149, §1, 35 Stat. 65; R. 2). The complaint was dismissed for lack of jurisdiction on the ground that petitioner's remedy was under the Longshoremen's and Harbor Workers' Compensation Act (R. 52; Act of Congress, March 4, 1927, 44 Stat. 1424). The Circuit Court of Appeals concluded that railway employees, employed in maritime employment, could not be excepted from the Act, and affirmed the judgment (R. 61, 62); 32 Fed. (2d) 179, 182.

Question Presented

Whether the Federal Employers' Liability Act of 1908, as amended, or the Longshoremen's and Harbor Workers' Compensation Act applies to employees of railroads, when both employers and employees are engaged in interstate commerce, when such employees are injured on navigable waters, while doing the work of longshoremen (R. 53, 54).

Summary of Argument

Point I—The statute involved is clear and unambiguous, and petitioner comes under its provisions.

(a) Pertinent provisions of the statute.

(b) The employment was maritime.

(c) The injury occurred upon navigable waters.

(d) The case is within admiralty jurisdiction in tort.

(e) This case is not of local but of general admiralty concern.

(f) Recovery cannot validly be provided by state compensation law.

(g) The statute is exclusive.

Point II—The intention of Congress was to provide compensation for railroad employees doing longshore work, injured on navigable waters, whether or not they were engaged in interstate commerce.

(a) Previous attempts by Congress to provide com-

pensation for longshoremen had been declared unconstitutional.

(b) Rights and remedies of seamen, longshoremen, and railroad employees prior to passage of Longshoremen's and Harbor Workers' Compensation Act.

(c) Legislative history of the passage of the Act.

(d) Act of May 17, 1928, applying to District of Columbia.

Point III—The interpretation adopted promotes uniformity and provides for all classes.

POINT I

The statute involved is clear and unambiguous, and petitioner comes under its provisions.

As was said by Mr. Justice Holmes, writing the opinion of this Court, in connection with another statute, "We are of opinion that the language of the statute is too definite to be escaped by construction" (*The Coamo,* 267 U. S. 220). It is a fundamental canon of statutory construction that Congress must be presumed to have intended the plain meaning of the language used in a statute.

(a) *Pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, 44 Stat. 1424.*

An Act to provide compensation for disability or death resulting from injury to employees in certain maritime employments, and for other purposes.

§2(2) reads as follows:

> The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

§2(3) reads as follows:

> The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

§2(4) reads as follows:

> The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock).

§3 reads in part as follows:

> (a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—
>
> (1) A master or member of a crew of any vessel, nor any person engaged by the master to load or un-

load or repair any small vessel under eighteen tons net; or * * *

§4 reads as follows:

Liability for compensation. (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

§5 reads as follows:

Exclusiveness of liability. The liability of an employer prescribed in §4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

For the sake of brevity we shall in most instances refer to the Longshoremen's and Harbor Workers' Compensation Act as the Act. In Appendix A we have set out this Act at greater length.

(b) *The employment was maritime.*

The petitioner contends that the Act does not apply to him because his employment was in interstate commerce, was an adjunct to transportation by rail, and, therefore, was not maritime employment within the meaning of the Act (petitioner's brief, pp. 6-8). This contention is quite separate and distinct from the claim that the Act was never intended to include railroad employees at all. We agree that the Act includes only those engaged in maritime work, by reason both of its title and of the provisions of Sections 2(4) and 3(a). But we cannot agree that the petitioner was not engaged in maritime employment merely because of the fact that the work was an adjunct to interstate transportation by rail. Some employees of a railroad, working on a float, may not be in maritime employment. The determination of the status of other classes of employees is not necessary to the decision of this case, and the problem was expressly passed by the Circuit Court of Appeals (R. 61; see our brief p. 26). The quotation set out on page 7 of petitioner's brief, from *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 213, could have, of course, no reference to the Act here involved. By express language it is exclusive of all other actions "at law or in admiralty" (§5). Furthermore, it is quite conceivable that some railroad employees on "boats" would not come under the Act because not longshoremen or harbor workers, and so not within the title. Because prior to the Act, or, at any rate, prior to

the Merchant Marine Act (Act of Congress of June 5, 1920, c. 250, §33, 41 Stat. 1007, amending Act of Congress of March 4, 1915, c. 153, §20, 38 Stat. 1185), petitioner could have sued under the Federal Employers' Liability Act (*supra*), does not signify he does not come under a later statute, broad in scope, and does not call for an arbitrary limitation of the meaning of the words longshoreman, harbor worker, maritime employment. The fact that the injury would formerly have fallen under the Federal Employers' Liability Act cannot have any effect in determining whether the character of the work was maritime. Nor can the interstate character of employment govern, unless it be conceded that petitioner's task would have been maritime had the cargo been intrastate.

Petitioner's contention must, therefore, rest upon the proposition that work having a direct and substantial connection with railroad operation cannot be maritime. But what basis is there for such a proposition? The floatmen and captains of tugs are engaged no less than the petitioner in work which is an adjunct to interstate transportation by rail. The entire operation may be thus characterized. Yet it could hardly be said that because of that fact floatmen and captains were not engaged in maritime employment. If some men engaged in the operation are unquestionably doing maritime work, it follows that a feature common to the whole operation—the feature of interstate transportation by rail—cannot be used to determine the maritime or non-maritime status of any men engaged in that operation.

Petitioner can find no support for his interpretation either in definition or judicial history. His was a specialized

service devolving upon a class clearly identified with maritime matters. *Atlantic Transport Co.* v. *Imbrovek,* 234 U. S. 52, 62. For the three years he had worked for the Company he had been along the East River, sometimes on a float, sometimes on a dock (R. 17). Even after his injury he sought and obtained employment from the Munson Line (R. 29). The employer happened to be a railroad company but his own work was clearly identified with maritime matters as a longshoreman, exactly the same as other longshoremen working for steamship or stevedoring companies. In short, petitioner's employment was maritime. His work was both upon the land and the water. *Northern Coal & Dock Co.* v. *Strand,* 278 U. S. 142, 144. It is maritime whether the employee is loading or unloading a boat. *Atlantic Transport Co.* v. *Imbrovek, supra* (pp. 61, 62).

Petitioner says the Act does not apply to railroad employees because, where the employer has failed to secure payment of compensation the defenses of fellow-servant negligence and assumption of risk are taken away, and this would take away something from railroads not available to them, and give nothing to the employees (petitioner's brief, p. 9). Petitioner then concludes the Act applies to that class of maritime employees who merely had a right of action at common law (petitioner's brief, p. 10). He has forgotten the Merchant Marine Act and *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50. Both longshoremen of railroads and longshoremen of steamboat companies had other rights and remedies—Federal Employers' Liability Act and the Merchant Marine Act incorporating the former into the general maritime law.

We think there can be no possible weight to the conten-

tion made by petitioner that because there is no direct reference to interstate railroad employees the Act does not cover them. It does not purport to name employees.

We do not think the courts should limit arbitrarily the operation of a remedial statute, broad in scope, intended by its proponents to substitute a more modern and socially desirable remedy than that provided by any so-called liability act.

(c) *The injury occurred upon navigable waters.*

When the truck was on the float petitioner still held the handles (R. 24). He fell on top of the rail when he was on the floor of the float and the truck and bale fell upon his leg (R. 26, 33).

The place where the negligent act "takes effect injuriously" governs jurisdiction in tort cases. "The negligence, of itself, furnishes no cause of action; it is *damnum absque injuria.*" *The Plymouth,* 3 Wall. 20, 36. This is further illustrated by *Atlee* v. *Packet Co.,* 21 Wall. 389; *Johnson* v. *Chicago & P. Elev. Co.,* 119 U. S. 388; *Martin* v. *West,* 222 U. S. 191; *Smith & Son* v. *Taylor,* 276 U. S. 179.

In *Hermann* v. *Port Blakely Mill Co.,* 69 Fed. 646 (cited in *Atlantic Transport Co.* v. *Imbrovek, supra,* p. 60) a laborer working in the hold of a vessel was injured by a piece of lumber sent, without warning, down through a chute by a person working on the pier. It was held the case was one of admiralty jurisdiction, although the negligent acts were completed on the land, because the substance and consummation of the tort were on the water. The locus

of the damage provides the real test. *A fortiori* this continues true where the negligence occurs partly on land and partly on water.

In the case at bar there was no impact until the bale, truck, and petitioner were on navigable waters. His fall over the rail was on navigable waters. The cause of action —or fact basis of the right of action—was not complete until he was on the float.

The Mary Garrett, 63 Fed. 1009, presents the reverse situation of our case. *The Aurora,* 163 Fed. 633, 178 Fed. 587, affirmed under the name of *Aurora Shipping Co.* v. *Boyce,* 191 Fed. 960 (C. C. A. 9th) is analogous in many respects and the Court looked at the place of injury.

There is another line of cases in which apparently there is less unanimity of result, those in which a man slips or falls from the ship to the wharf, or vice versa. Some of them decide that the locus of the impact determines jurisdiction. *The Aurora, supra.* Others proceed on the theory that a cause of action is complete when the injured man is falling even before the impact and that since at that time he has not yet reached the other element, the place from which he fell governs the question of jurisdiction. *The Strabo,* 90 Fed. 110, aff'd 98 Fed. 998 (C. C. A. 2d). If the petitioner in the instant case suffered any damage while on the gang-plank, it is submitted that it was shown to be only nominal and that the case of *The Strabo* would not govern. Moreover, this is not a case where the injuries resulted from the fall but rather where the petitioner was struck by something falling upon him from the land.

In cases like the present, the simplest test of jurisdiction in the tort aspect is the locus of the impact. The efficient administration of the Longshoremen's and Harbor Workers' Compensation Act requires that the test be a simple one. To go further back in the chain of causation of an injury would involve those seeking the beneficial remedies of the Act and those administering it in the subtleties and complexities of the law of proximate cause. This would, it is submitted, be an undesirable result.

(d) *The case is within admiralty jurisdiction in tort.*

> "If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated §2 of Art. 3." *Smith & Son* v. *Taylor, supra,* p. 181.

(e) *This case is not of local but of general admiralty concern.*

By reason of the fact that petitioner's employment was maritime, that the injury occurred upon navigable waters, that the case is within the admiralty jurisdiction in tort, it becomes one not of local but of general admiralty concern, involving all of the characteristic features of the general maritime law. *London Guarantee & A. Co.* v. *Industrial Acci. Com.*, 279 U. S. 109. It has a special, direct relation to commerce. *Gt. Lakes Co.* v. *Kierejewski*, 261 U. S. 479; *Washington* v. *Dawson & Co.*, 264 U. S. 219; *Gonsalves* v. *Morse Dry Dock Co.*, 266 U. S. 171; *Robins Dry Dock Co.* v. *Dahl*, 266 U. S. 449, 457.

(f) *Recovery cannot validly be provided by state compensation law.*

Under the Act compensation is not payable if recovery for the disability or death through workmen's compensation proceedings may validly be provided by state law (§3, subdivision [a]). Longshore work is not of "mere local concern" but has a "special relation to commerce and navigation" and is beyond "the regulatory power of the State." *Northern Coal & Dock Co.* v. *Strand, supra.* The distinction is made clear in *Grant Smith-Porter Co.* v. *Rohde,* 257 U. S. 469, where the contract was non-maritime; in *Industrial Comm.* v. *Nordenholt Co.,* 259 U. S. 263, where the tort was committed on the dock; in *Millers' Underwriters* v. *Braud,* 270 U. S. 59, where the employment was non-maritime and of local concern; and in *London Guarantee & A. Co.* v. *Industrial Acci. Com., supra,* where the maritime jurisdiction was held to be exclusive.

(g) *The statute is exclusive.*

Sec. 5 of the Act provides that the liability of an employer for compensation "shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, * * *." Certainly this provision takes away the longshoreman's right under the Merchant Marine Act which incorporates the Federal Employers' Liability Act into the maritime law. No reason appears why it does not and should not also directly take away a railroad longshoreman's right under the Federal Employers' Liability Act, if the conditions are satisfied. Petitioner apparently admits this (petitioner's brief, bot. of p. 8 and top of p. 9). Senate Report No. 973 in connection with

Senate Bill No. 3170, and House Report No. 1767 in connection with Senate Bill No. 3170 bear out our interpretation (Cong. Rec., 69th Cong., 1st Sess., vol. 67, pt. 10, pp. 10,467, 10,608-10,614; 69th Cong., 2nd Sess., vol. 68, pt. 2, p. 1687). These reports will be discussed under Point II (c).

While the Act makes no express reference to the title of any existing law or statute, "at law" and "all other liability" can refer, in respect of all longshoremen injured upon navigable waters, only to the Merchant Marine Act, the Federal Employers' Liability Act, the Federal Safety Appliance Acts (Act of March 2, 1893, c. 196; 27 Stat. 531: amendatory Act of March 2, 1903, c. 976; 32 Stat. 943: supplementary Act of April 14, 1910, c. 160; 36 Stat. 298), and the Federal Locomotive Boiler Inspection Act (Act of February 17, 1911, c. 103; 36 Stat. 913, as amended March 4, 1915, c. 169; 38 Stat. 1192, and June 7, 1924, c. 355; 43 Stat. 659). They are adequately identified, adopted by generic reference. *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375, 391, 392. The broad scope of its terms necessarily produces a repeal of anything in conflict without naming it. An examination of the existing applicable laws shows the limited repeal in fact effected.

The facts of the case bring it squarely within the provisions of the Act—the float was a vessel of more than 18 tons, petitioner was not a master nor a member of the crew, the employment was maritime, the injury occurred upon navigable waters, the case is within admiralty jurisdiction in tort, the case is not of local but of general admiralty concern, recovery cannot validly be provided by state compensation law, the statute is exclusive, and clear and unambiguous.

POINT II

The intention of Congress was to provide compensation for railroad employees doing longshore work, injured on navigable waters, whether or not they were engaged in interstate commerce.

(a) *Previous attempts by Congress to provide compensation for longshoremen had been declared unconstitutional.*

It is now a matter of common knowledge how the suggestion thrown out in *Washington* v. *Dawson & Co., supra,* p. 227, came to be eagerly adopted by Congress. *Southern Pacific Co.* v. *Jensen, supra,* held that state compensation laws applying to stevedores interfered with the uniformity of the maritime law, and an award under a compensation law, not being a common law remedy, was not excepted from the grant of admiralty jurisdiction provided by the Judiciary Act of 1789, c. 20, §9; 1 Stat. 76.

Knickerbocker Ice Co. v. *Stewart,* 253 U. S. 149, dealt with an amendment to the saving clause that added "and to claimants the rights and remedies under the Workmen's Compensation law of any state." Act of Congress of October 6, 1917, c. 97, 40 Stat. 395.

Washington v. *Dawson & Co., supra,* declared unconstitutional, on the authority of the two previous cases, another attempt of Congress to pass a compensation law which restricted the power to claim compensation under state laws to "persons other than the master or members of the crew of a vessel." Act of Congress, June 10, 1922, c. 216, 42 Stat. 634, amending §§24 and 256 of the Judicial Code.

(b) *Rights and remedies of seamen, longshoremen, and railroad employees prior to passage of Longshoremen's and Harbor Workers' Compensation Act.*

Immediately prior to the passage of the Longshoremen's and Harbor Workers' Compensation Act the situation was by no means simple. Congress, in 1908, had passed the Federal Employers' Liability Act, and Mr. Justice McReynolds, writing the opinion of this Court in *Southern Pacific Co.* v. *Jensen, supra,* said that the word "boats" in the Federal Employers' Liability Act referred to vessels which might be properly regarded as in substance but part of a railroad's extension or equipment as understood and applied in common practice (p. 213).

Petitioner assumes that heretofore he would have had a right to maintain an action under the Federal Employers' Liability Act (brief, pp. 4, 8), that all railroad employees engaged in interstate commerce injured on a float were governed by the Federal Employers' Liability Act, the Safety Appliance Act, the Boiler Inspection Act (pp. 19-21). The opinion of Circuit Judge Swan assumes this in part (R. 56). Probably certain further qualifications have to be made to this assumption. Petitioner cites certain cases in support thereof. *B. & O. S. W. R. R.* v. *Burtch,* 263 U. S. 540, involved unloading interstate freight from a train. The work was held to be a part of interstate commerce. The same holding was made in *Illinois Cent. R. Co.* v. *Porter,* 207 Fed. 311 (C. C. A. 6th, 1913), where the decedent was loading interstate freight from a warehouse into a car. In *Erie R. Co.* v. *Jacobus,* 221 Fed. 335 (C. C. A. 3rd, 1915), plaintiff, a deckhand on one of defendant's tugs, was injured while in the act of securing a line to a

bitt, the tug starting without warning. The question of interstate commerce was properly left to the jury. "The expression 'by railroad' is but descriptive of the kind of common carriers to which the statute relates * * *" (p. 338). Because the act (Federal Employers' Liability Act) enumerates boats and wharves, "the scope of the act was intended to include the liability of carriers * * * occurring upon or in connection with those instrumentalities while engaged in interstate commerce" (p. 338).

We must remember the Merchant Marine Act of 1920. But whatever rights and remedies existed prior to the Act involved we must concern ourselves with its effect and cannot insist upon the continuance of a right solely for historical reasons.

Cases of this kind, even prior to the Act, looked toward admiralty as shown by *The Passaic,* 204 Fed. 266 (C. C. A. 2nd, 1913), which applied the limited liability acts while also applying the Federal Employers' Liability Act (cited by petitioner at p. 8).

The Merchant Marine Act gave to seamen the remedies accorded to railroad employees under the Federal Employers' Liability Act, incorporating it into the maritime law of the United States. *Engel* v. *Davenport,* 271 U. S. 33. The Merchant Marine Act covered stevedores, who were classified as seamen. *International Stevedoring Co.* v. *Haverty, supra.*

Seamen, including stevedores, could sue in federal or state courts to enforce this last Act. *Engel* v. *Davenport, supra.* Rights could be enforced by suits in admiralty or

actions at law, but not both. *Buzynski* v. *Luckenbach S. S. Co.*, 277 U. S. 226. The Merchant Marine Act excludes state statutes. *Engel* v. *Davenport, supra.* It applies even to the case of a seaman injured on a foreign vessel. *Williams* v. *Oceanic Stevedoring Co.*, 27 Fed. (2d) 905 (S. D. Texas, 1928).

If a seaman is injured on the ship he has a right to indemnity for injuries due to unseaworthiness or defective appliances, or a right under the Merchant Marine Act, and also a right to maintenance, cure and wages. *Pacific Co.* v. *Peterson,* 278 U. S. 130. If a seaman is injured on the land he is allowed recovery for maintenance and cure. *The Montezuma,* 19 Fed. (2d) 355 (C. C. A. 2nd).

Petitioner's brief goes into this judicial and legislative history (pp. 11-14), but does not point out the significance of the Merchant Marine Act, and omits any reference to *International Stevedoring Co.* v. *Haverty, supra.*

(c) *Legislative history of the passage of the Act.*

With this introduction we come to the legislative history of the passage of the Longshoremen's and Harbor Workers' Compensation Act, assuming for the moment that the statute is not so clear it forbids construction.

On February 17th, 1926, Senate bill 3170 was referred to the Committee on the Judiciary (Cong. Rec., 69th Cong., 1st Sess., vol. 67, pt. 4, p. 4119). The subcommittee held hearings on March 16 and April 2, 1926. Various representatives of longshoremen appeared urging passage of a compensation law. The committee report (No. 973) says there are in the neighborhood of three hundred thousand

men employed in longshore work in the entire country, deems it unnecessary to comment upon the modern change in the relation between employers and employees by systems of compensation as distinguished from liability.

On April 8th, 15th and 22nd, 1926, hearings were held before the Committee on the Judiciary of the House in connection with H. R. 9498. This bill, as well as the original Senate bill, contained an express provision that the act did not apply to employment as master or member of the crew of a vessel (Sec. 3) (Hearings before the Committee on the Judiciary, House of Representatives, 69th Cong., 1st Sess., p. 2. Hearings before a subcommittee of the Committee on the Judiciary, United States Senate, 69th Cong., 1st Sess., p. 2).

On June 2nd, 1926, Senate bill 3170 was submitted with report No. 973 and on June 3rd the Senate considered it. The bill still excluded "master" and "seaman" (Cong. Rec., 69th Cong., 1st Sess., vol. 67, pt. 10, p. 10,608). On January 14th, 1927, the bill was referred to the Committee of the Whole House on the State of the Union, accompanied by House Report No. 1767 (Cong. Rec., 69th Cong., 2nd Sess., vol. 68, pt. 2, p. 1687). At that time the bill included master and member of crew and gave them compensation in addition to maintenance and cure and wages.

This Report reads in part as follows:

> "The Senate bill as reported by the committee will provide the benefits of workmen's compensation to practically all maritime workers within the admiralty jurisdiction. Workmen's compensation has come to be universally recognized as a necessity in the in-

terest of social justice between employer and employee. It is the modern substitute for the old common law remedy afforded through actions at law for damages, and promptly affords relief to the injured employee by furnishing medical attendance and supplies immediately upon the occurrence of the injury * * *."

On March 2nd, 1927, the House passed the bill, and at that time it contained the provision that the term "employee" did not include a master or a member of a crew of any vessel (Cong. Rec., 69th Cong., 2nd Sess., vol. 68, pt. 5, pp. 5402-5414). On March 4th, 1927, the Vice-President laid the House amendment to Senate bill 3170 before the Senate and the Senate concurred (Cong. Rec., 69th Cong., 2nd Sess., vol. 68, pt. 5, pp. 5900-5909).

Both the original Senate and House bills expressly excluded "master or member of the crew of a vessel." Senate bill No. 3170, submitted with House Report No. 1767 on January 14th, 1927, included master or member of the crew (Sec. 2(3)). It gave them compensation in addition to maintenance and cure and wages (Sec. 5). When the bill was returned from the House to the Senate, seamen were excluded because they were satisfied with their condition as explained to Congress by their representatives.

If the Act is so clear that interpretation must be gathered from the words themselves, then Point II of petitioner's brief is outside of the scope of this inquiry (pp. 10-18). But we have set out the legislative history because we disagree with petitioner's findings of Congressional intent.

On page 14 of his brief petitioner argues that Congress had no intention of legislating with respect to railway employees engaged in interstate commerce because Congress had already done this under its power to regulate commerce. But petitioner forgets Congress had already legislated for longshoremen by the Merchant Marine Act. The change was from liability to compensation for this class of employees. This Court said Congress could enact a general employers' liability law, or general provisions for compensating injured employees. *Washington* v. *Dawson & Co., supra.* Congress had already done the one and had made two unsuccessful attempts at compensation legislation.

On page 16 of his brief petitioner says that seamen occupy the same position as railway employees with regard to their remedies, citing *Panama R. R. Co.* v. *Johnson, supra,* and *Engel* v. *Davenport, supra.* This is true only in part for we have shown how seamen have other rights than those conferred by the Merchant Marine Act. Also the venue may be different (see note in 41 Harvard Law Review, p. 791). Petitioner then argues that when the original intention was to include seamen, specific reference was made to them and as no specific reference was made to railway employees it was the obvious intention of Congress not to include them. The reasoning might be sounder if founded on a correct fact basis. The first bill expressly excluded seamen. This is some indication it included railway employees, certainly true if we adopt petitioner's theory of interpretation. In an intermediate legislative stage they were included, expressly, to get them out of the express exclusion. In the final stage they were again expressly excluded, to get them out of the express inclusion, and at the request of their representatives.

We cannot do better than use the words of Circuit Judge Swan in this connection:

> "In the light of this legislative history it would seem impossible to construe the statute (assuming that its language is not so clear as to forbid construction) so as to exclude freight handlers who work on railway car floats, without also excluding longshoremen who work on other types of vessels. Both classes are within the letter of the statute; both had other rights and remedies before its passage" (R. 60).

(d) *Act of May 17, 1928, applying to District of Columbia.*

The Act of May 17, 1928, c. 612, 45 Stat. 600, applies the provisions of the Longshoremen's and Harbor Workers' Compensation Act "in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia."

> "Sec. 2. This Act shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) *an employee of a common carrier by railway when engaged in interstate or foreign commerce or commerce solely within the District of Columbia;* (3) an employee subject to the provisions of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes, * * *'; and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer." (Italics ours.)

Both the Act of March 4, 1927, and the Act of May 17, 1928, are broad enough in language to cover the petitioner, if no express exception is made. To exclude employees of common carriers engaged in certain kinds of commerce Congress made express exception in the latter Act. If the language in the former Act is broad enough to cover such employees it makes no difference how much broader the language is of the latter Act. Their express exclusion is most significant. Congress extended "this accepted principle of compensation" to certain workers injured on land in the District of Columbia who were "waiting upon Congress for the measure of social justice which has elsewhere been almost universally adopted" (70th Cong., 1st Sess., Senate Report No. 852, April 20, 1928; and House Report No. 1357, April 21, 1928).

Furthermore, by reason of the broad coverage if railroad employees had not been expressly excepted they would have lost their rights under the Federal Employers' Liability Act when injured on land.

> "* * * the later acts should also be regarded as legislative interpretations of the prior ones." *Cope* v. *Cope,* 137 U. S. 682, 688.

POINT III

The interpretation adopted promotes uniformity and provides for all classes.

By confusion of thought petitioner raises a confusion in rights and remedies. Seemingly it runs this way: if the fact he was injured on navigable water removes him from the

Federal Employers' Liability Act then other classes of railroad employees engaged in interstate commerce are removed; locality of the accident is the sole test; all railroad employees injured on navigable waters are in the same position as petitioner (petitioner's brief, pp. 19, 20). Then comes the conclusion that because of the judgment all railroad employees injured while working on navigable waters are deprived of the Federal Employers' Liability Act, the Safety Appliance Act, the Boiler Inspection Act (petitioner's brief, pp. 20-22).

We think that mere locus of the accident does not necessarily determine the right. At one stage petitioner evidently thought maritime employment had something to do with the case (petitioner's brief, p. 6). *Cope* v. *Vallette Dry-Dock Co.*, 16 Fed. 924 (E. D. Louisiana, 1883), aff'd 119 U. S. 625, shows that a service is not necessarily maritime because rendered upon the high seas or a navigable river. Sec. 2 (4) of the Act refers to maritime employment. In *Gt. Lakes Co.* v. *Kierejewski, supra,* not only was the tort committed and effective on navigable waters, but the rights and liabilities of the parties were matters which had direct relation to navigation and commerce (see petitioner's brief, p. 20).

For some not very clear reason petitioner cites *Chicago, G. W. R. R.* v. *Schendel,* 267 U. S. 287, which held that the use, movement or hauling of a car, within the meaning of the Safety Appliance Act, had not ended when a brakeman went between it and the next car to detach the chain and was injured by the movement of the car by gravity as the engine was cut off (petitioner's brief, p. 21). Both *Baltimore & Ohio R. R. Co.* v. *Groeger,* 266 U. S. 521, and *Great*

Northern Ry. Co. v. *Donaldson*, 246 U. S. 121, involved the application of the Federal Boiler Inspection Act of February 17, 1911, Sec. 2, 36 Stat. 913, and the former case also the amendment of March 4, 1915, 38 Stat. 1192, to engineers killed by boiler explosions (petitioner's brief, p. 21).

Probably a brakeman, conductor or engineer moving cars onto a float is not engaged in maritime employment although the determination is not necessary to this case and the problem was expressly passed by the Circuit Court of Appeals (R. 61). In this connection Opinion No. 29 of January 20, 1928, approved by the United States Employees' Compensation Commission, is of interest. It reads in part as follows:

> "The loading of a vessel by pushing loaded or empty cars on board a car ferry by means of a locomotive does not appear to differ from the work of loading such vessel by means of a large automobile truck or a smaller electric truck which carries onto the vessel a load to fill or partly fill a car. The work of the engineman operating the locomotive when it does run on board the vessel has the same maritime characteristics as the work of the truck operator who may operate one truck or a string of trucks on and off a vessel, loading or unloading cargo.
>
> "The trainmen and switchmen who ride railroad cars, couple or uncouple them, set or release the brakes on the cars while they are on board a vessel, work directly in connection with the loading or unloading of such vessel and can be considered in no different category than that of the ordinary longshoreman doing similar work on a smaller scale.
>
> "The only question involved is whether the Federal employers' liability act providing a remedy for

the employee engaged in interstate commerce is exclusive and in no way modified by the longshoremen's and harbor workers' compensation act. It is evident from the discussion at the hearings held prior to the passage of the latter act that it was the understanding of all concerned that its passage in the form in which it was considered would have modified the rights of seamen who had previously been given the benefits of the Federal employers' liability act applicable to interstate commerce employees. The seamen would not agree to accept the longshoremen's bill if applicable to seamen unless the rights to be given therein were entirely in addition to any rights which they might have under the laws then in effect, including the rights under the Federal employer's liability act.

"Section 5 of the longshoremen's act provides that 'the liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, or anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death.' The right of an interstate commerce employee to compensation under the Federal employers' liability act to recover damages is a right enforceable 'at law' and the wording of this section appears to be sufficiently broad, so far as it is applicable, to modify or supersede the provisions of the Federal employers' liability act. * * *

"It is concluded that employees of a railroad company who go aboard vessels and render services in connection with putting on board, or taking off loaded or empty cars are engaged in maritime employment; that these same employees who sustain injuries while employed in their regular employment on land are not covered by the longshoremen's act,

but are covered either by Federal or State laws; * * *" (pp. 42-44).

Petitioner is much concerned because, under the interpretation made, certain railroad employees, engaged in interstate commerce, are given the benefits of the Act and deprived of previous rights under the Federal Employers' Liability Act and certain safety provisions (petitioner's brief, pp. 20-22). This same concern should run to longshoremen of all classes who came under the Federal Employers' Liability Act as a result of the Merchant Marine Act incorporation.

"Congress has apparently expressed an intention to remove such persons from the operation of the earlier act as thus construed by the Supreme Court, and to place them under the later act." *Obrecht-Lynch Corporation* v. *Clark*, 30 Fed. (2d) 144, 146, 147. Moreover, in the Congressional view of the situation, any sacrifice of rights under liability statutes was made to attain a greater gain, the gain represented by one of the most liberal compensation remedies ever enacted in this country.

There is no doubt but that repeals by implication are not favored by the courts (petitioner's brief, pp. 23, 24). But there is repeal by implication when one statute is clearly repugnant to another, is absolutely irreconcilable, when effect cannot be given to both, according to the very cases cited by petitioner. We submit that the Act operates as a repeal, to the extent necessary, of the earlier Federal Employers' Liability Act. The Act is exclusive of all other liability, including actions at law or in admiralty (§5). The Act repeals in part the application of the Merchant

Marine Act, not expressly but by implication, and by so doing repeals in part the application of the Federal Employers' Liability Act. In this connection the interpretation of the Suits in Admiralty Act, Act of Congress of March 9, 1920, c. 95, 41 Stat. 525, is of interest. We refer to *Eastern Transp. Co.* v. *United States,* 272 U. S. 675; *Fleet Corp.* v. *Rosenberg Brothers,* 276 U. S. 202; and *Federal Sugar Refining Co.* v. *United States,* 30 Fed. (2d) 254 (C. C. A. 2nd, 1929), certiorari denied 49 S. Ct. 352. In those cases there was a presumption against the suability of the United States, that a Court should not enlarge the liability of the United States beyond what the language required, that the express purpose of the Suits in Admiralty Act was merely to create a substitute for a suit in rem. The Courts looked at the broad provisions of the Act and the legislative history.

Circuit Judge Swan points out that the "adoption of the plaintiff's interpretation would drive us to the absurd result that a railroad employee loading intrastate freight upon a car float would also be excluded, and thus left without any statutory remedy" (R. 61). Such a case would not come under the Federal Employers' Liability Act, nor the Merchant Marine Act. Under the interpretation urged by petitioner uniformity would be lost by diverse state compensation laws under the principles laid down in *Industrial Comm.* v. *Nordenholt Co., supra,* and *Grant Smith-Porter Co.* v. *Rohde, supra.* As a practical matter there would be little occasion for the application of the Safety Appliance Acts and the Federal Locomotive Boiler Inspection Act.

We have here involved not the paramount authority of Congress to the exclusion of state regulation, the situation

obtaining in *Texas & Pacific Ry.* v. *Rigsby,* 241 U. S. 33, but two statutes of Congress passed under the authority of distinct Constitutional grants—Art. I, §8, par. 18, Art. III, §2 and Art. I, §8, par. 3. No sanctity attaches to these statutory rights and even Messel, a boilermaker's helper, would now be under the Act. *Messel* v. *Foundation Co.,* 274 U. S. 427. All longshoremen injured on navigable waters are now under the Act. No reason exists for treating longshoremen of railroad companies differently from longshoremen of steamship companies. The interpretation given recognizes the characteristic features and uniformity of the general maritime law. *London Guarantee & A. Co.* v. *Industrial Acci. Com., supra.*

CONCLUSION

We conclude that the District Court and the Circuit Court of Appeals have applied plain words to a plain situation, have carried out the intent of Congress, have made the only possible decision that means uniformity and justice to all, have substituted a certain remedy for the gamble of litigation, in line with the modern concept of responsibility arising out of status. We respectfully submit that the judgment should be affirmed.

JOHN M. GIBBONS,
Counsel for The New York, New Haven and Hartford Railroad Company.

EDWARD R. BRUMLEY,
FLEMING JAMES, JR.,
EDMUND J. MOORE,
Of Counsel.

APPENDIX A

Pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, 44 Stat. 1424.

An Act to provide compensation for disability or death resulting from injury to employees in certain maritime employments, and for other purposes.

SHORT TITLE

SECTION 1. This Act may be cited as "Longshoremen's and Harbor Workers' Compensation Act."

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable

waters of the United States (including any dry dock).

(5) The term "carrier" means any person or fund authorized under section 32 to insure under this Act and includes self-insurers.

(6) The term "commission" means the United States Employees' Compensation Commission.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

(13) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under eighteen years of age.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

(17) The term "widower" includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her.

(18) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(19) The singular includes the plural and the masculine includes the feminine and neuter.

COVERAGE

SEC. 3. (a) Compensation shall be payable under this Act in respect of disability or death of an em-

ployee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

LIABILITY FOR COMPENSATION

SEC. 4. (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

EXCLUSIVENESS OF LIABILITY

SEC. 5. The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal

representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

TIME FOR COMMENCEMENT OF COMPENSATION

SEC. 6 (a) No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 7: *Provided, however,* That in case the injury results in disability of more that forty-nine days, the compensation shall be allowed from the date of the disability.

(b) Compensation for disability shall not exceed $25 per week nor be less than $8 per week: *Provided, however,* That if the employee's wages at the time of injury are less than $8 per week he shall receive his full weekly wages.

* * * * *

PRESUMPTIONS

SEC. 20. In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this Act.

(b) That sufficient notice of such claim has been given.

(c) That the injury was not occasioned solely by the intoxication of the injured employee.

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

INVESTIGATIONS BY THE COMMISSION

SEC. 41 (a) The commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this Act, and shall from time to time make to Congress and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(b) In making such studies and investigations the commission is authorized (1) to cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this Act, or with any State agency, engaged in enforcing any laws to assure safety for employees, and (2) to permit any such agency to have access to the records of the commission. In carrying out the provisions of this section the commission or any officer or employee of the commission is authorized to enter at any reasonable time upon any premises, tracks, wharf, dock, or other landing place, or upon any vessel, or to enter any building, where an employment covered by this Act is being carried on, and to examine any tool, appliance, or machinery used in such employment.

APPENDIX B

ACT OF MAY 17, 1928, C. 612, 45 STAT. 600

Application of chapter to District of Columbia—Act May 17, 1928, c. 612, 45 Stat. 600, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes," provides as follows:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the provisions of the Act entitled "Longshoremen's and Harbor Workers' Compensation Act," approved March 4, 1927, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.
>
> SEC. 2. This Act shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended; and (4) an employee engaged in agricul-

ture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer.

SEC. 3. This Act shall take effect July 1, 1928.

APPENDIX C

THE FEDERAL EMPLOYERS' LIABILITY ACT OF 1908

Act of April 22, 1908, c. 149, §1, 35 Stat. 65:

An Act relating to the liability of common carriers by railroad to their employees in certain cases.

SECTION 1. Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

APPENDIX D

THE MERCHANT MARINE ACT OF 1920

Act of March 4, 1915, c. 153, §20, 38 Stat. 1185, as amended by Act of June 5, 1920, c. 250, §33, 41 Stat. 1007:

> Recovery for injury to or death of seaman. Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

APPENDIX E

Senate Report No. 973, 69th Congress, First Session, June 2, 1926.

(Report to accompany S. 3170)

The Judiciary Committee, having had under consideration the bill S. 3170, recommends that the bill do pass with the following amendment:

Strike out all after the enacting clause and insert the following:

(Bill inserted here)

The purpose of this bill is to provide for compensation, in the stead of liability, for a class of employees commonly known as "longshoremen." These men are mainly employed in loading, unloading, refitting and repairing ships; but it should be remarked that injuries occurring in loading or unloading are not covered unless they occur on the ship or between the wharf and the ship so as to bring them within the maritime jurisdiction of the United States. There are in the neighborhood of 300,000 men so employed in the entire country.

The committee deems it unnecessary to comment upon the modern change in the relation between employers and employees establishing systems of compensation as distinguished from liability. Nearly every State in the Union has a compensation law through which employees are compensated for injuries occurring in the course of their employment without regard to negligence on the part of the employer or contributory negligence on the part of the employee. If longshoremen could avail themselves of the benefits of State compensation laws, there would be no occasion for this legislation; but, unfortunately, they are excluded from these laws by reason of the character of their employment; and they are not only excluded but the Supreme Court has more than once held that Federal legislation cannot, constitutionally, be enacted that will apply State laws to this occupation. (*Southern Pacific Company* v. *Jensen*, 244 U. S. 205; *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149; *Washington* v. *Dawson & Co.*, 264 U. S. 219.)

It thus appears that there is no way of giving to these hardworking men, engaged in a somewhat hazardous employment, the justice involved in the modern principle of compensation without enacting a uniform compensation statute.

II. It will be remembered that in 1916 Congress passed a Federal compensation law applicable to Government employees. It is administered by a commission of three members. In order to save the expense of an independent establishment, this bill provides that the law shall be administered by the Federal compensation commission and through deputy commissioners appointed by the commission in such places as convenience may require.

III. Sec. (3) of the bill describes the persons to be brought within its terms with such exceptions as are necessary to limit the operation of the bill to the very persons who are intended to be covered by it.

Sections (4), (5), and (6) of the bill contain the appropriate provisions for making certain that the compensation will be paid, abolishing liability on the part of the employer except for the payment of the prescribed compensation, and fixing the time at which compensation begins.

IV. The bill as originally introduced contained a complete scale of compensation and for the distribution of benefits in the event of death. Upon the most careful consideration, the committee finally concluded that instead of prescribing an independent scale of compensation, it would be more equitable to adopt the rate of compensation provided for in the Federal compensation law; first, because the Fed-

eral commission is familiar with the administration of this law and there would be greater certainty of findings and decisions, and second, because Congress is fairly familiar with the workings of the present Federal law and the passage of this much needed act would be facilitated.

V. The remainder of the bill is almost entirely administrative and it is not thought necessary to take up these provisions in detail. The greatest care has been observed in making all its parts harmonious and consistent, and these administrative features can easily be explained when the bill comes before the Senate for consideration.

APPENDIX F

House Report No. 1767, 69th Congress. (Report to accompany S. 3170.)

The Committee on the Judiciary to whom was referred Senate bill 3170, after hearings (ser. 16, pt. 2) and consideration, reports the same favorably with amendments, and recommends that the bill as amended do pass.

The committee amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

(Bill inserted here)

The Senate bill as reported by the committee will provide the benefits of workmen's compensation to practically

all maritime workers within the admiralty jurisdiction. Workmen's compensation has come to be universally recognized as a necessity in the interest of social justice between employer and employee. It is the modern substitute for the old common law remedy afforded through actions at law for damages, and promptly affords relief to the injured employee by furnishing medical attendance and supplies immediately upon the occurrence of the injury or as soon thereafter as possible and compensation during the period of his illness or inability to pursue his usual employment, and in case of death, financial assistance to his dependents, without the delay and expense which an action at law entails.

Congressional action is necessary owing to the provisions of the Constitution of the United States.

Article 3, section 2, of the Constitution provides that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction," and article I, section 8, confers upon Congress power "to make all laws which may be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof."

The Supreme Court has held that these provisions of the Constitution grant to Congress "paramount power" to fix and determine the maritime law of the United States. (*Butler* v. *Boston and Savannah S. S. Co.*, 130 U. S. 527; *In re Garnett*, 141 U. S. 1, 14.)

The Senate bill as reported by the committee has been amended so as to make it conform substantially to the bill

reported to the House by the Judiciary Committee on May 13, 1926. (H. R. 12063, H. Rept. 1190.)

The bill has also been amended so as to provide the benefits of compensation to seamen, or, to use the language of the bill, "to masters and members of the crew." As to this class of workers, the bill provides that they are to receive compensation, in addition to their right to maintenance and cure, and wages to the end of the voyage as now provided by maritime law.

The principle of workmen's compensation has become so firmly established that simple justice would seem to require that this class of maritime workers should be included in this legislation. Owing to the peculiar nature and hazards of this employment, however, it is not felt that their ancient rights of maintenance and cure and wages should be disturbed. The situation is met, however, by leaving these rights with the seamen and granting them in addition the benefits of workmen's compensation with a proviso that they shall not receive medical services and supplies when they are receiving the equivalent thereof as cure, and that the amount paid to injured seamen as wages shall be credited against any amount due injured seamen as compensation.

In December, 1926, a bill was introduced in the Senate to provide workmen's compensation for seamen, and this committee has on file petitions signed by over 5,000 seamen requesting that they be included in this bill.

The bill as amended, therefore, will enable Congress to discharge its obligation to the maritime workers placed

under their jurisdiction by the Constitution of the United States by providing for them a law whereby they may receive the benefits of workmen's compensation and thus afford them the same remedies that have been provided by legislation for those killed or injured in the course of their employment in nearly every State in the Union.